gress unequivocally tied the coverage of these tax provisions to the body of decisional law defining the employer-employee relationship in various occupations.

In none of the discussions of the 1948 resolution was there any discussion of maritime employees. The respondents argue that, by failing to make specific provision for the application of maritime law to seagoing occupations, Congress impliedly decreed that those occupations should be gauged by the standards of the "common law" applicable to land-based activities. They rely in part on the fact that the phrase "common law" is sometimes used in contradistinction to the "maritime law" traditionally applied in courts of admiralty, and they also point to the fact that the Senate Report stressed the degree of the employer's control over the employee's work as central to the Committee's understanding of the common-law tests of employment. The Senate Report quoted with approval the then-existing regulation, substantially identical to the one now in effect,[14] which stated:

> "Every individual is an employee if the relationship between him and the person for whom he performs services is the legal relationship of employer and employee.
>
> "Generally such relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but how it shall be done. . . ." S. Rep. No. 1255, *supra*, at 3.

[14] 26 CFR § 31.3121 (d)–(e).

Respondents argue that this language indicates a congressional intent that, where the maritime nature of a vocation makes impracticable the degree of control generally exercised by land-based employers over their employees, the land-based standards must nevertheless be applied, with the result that no "employment" exists for the purposes of those statutes.

III

We do not think Congress intended the anomalous result of having maritime activities subject to standards, for social security tax purposes, other than those that are relevant to seafaring enterprises. Such a result is not necessary to accomplish the dual concerns underlying the 1948 amendment. Application of maritime standards to determine the status of members of fishing ventures will not open brand new areas of social security coverage. To the contrary, the employee status of captains and crewmen engaged in fishing operations similar to these is supported by a Treasury Department interpretation, applying maritime standards, that was issued in 1940, immediately after maritime employees were first brought within the coverage of the Social Security Act by amendment in 1939. S. S. T. 387, 1940–1 Cum. Bull. 192; see Social Security Act Amendments of 1939, §§ 606, 614, c. 666, §§ 606, 614, 53 Stat. 1360, 1383, 1392, as amended, 26 U. S. C. §§ 3121 (b), 3306 (c). This ruling, which the Social Security Administration has accepted for purposes of paying benefits to claimants, had existed for eight years before Congress added the present definitions of "employee" to the statutes. It was not mentioned at the time of the 1948 amendment. Since the ruling represented the accepted view of both the taxing and paying agencies, Congress could have had no concern that payment of benefits to

maritime employees would constitute an uncompensated drain on the social security fund.[15]

More important, the chief concern behind the 1948 amendment—avoiding the uncertainty of the proposed "economic reality" test—is wholly satisfied if seafaring work relationships are tested against the standards of maritime, rather than land-based, decisional law. Congress' fearfulness of the "nebulous" nature of the proposed regulation indicates that it used the phrase "usual common law rules" in a generic sense, to mean the standards developed by the courts through years of adjudication, rather than in a technical sense to mean those standards developed by "common law" courts as opposed to courts of admiralty. Maritime law, the common law of seafaring men, provides an established network of rules and distinctions that are practically suited to the necessities of the sea, just as land-based decisional law provides a body of rules adapted to the various forms of domestic employment. The goal of minimizing uncertainty can be accomplished, in the maritime field, by resort to the "usual" rules of maritime jurisprudence.[16]

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[15] Subsequent amendments to the social security laws make it now even clearer that classification of some maritime workers as employees will not threaten the social security fund. The Social Security Act Amendments of 1950 extended benefits coverage to the self-employed for the first time. C. 809, 64 Stat. 477, 502, 540; see H. R. Rep. No. 1300, 81st Cong., 1st Sess., 9–10 (1949). Benefits for the self-employed are financed by taxes paid by them under the Self-Employment Contributions Act, 26 U. S. C. § 1401 *et seq.*; see H. R. Rep. No. 1300, *supra*, at 135–145; S. Rep. No. 1669, 81st Cong., 2d Sess., 153–166 (1950). Therefore, the captains and crewmen are eligible for social security benefits whether they are considered employees or self-employed.

[16] A conclusion that maritime standards could not be applied might frustrate Congress' evident expectation that the FICA and FUTA legislation would apply to seamen, and specifically to fisher-

This conclusion is not weakened by the emphasis given, both in the Senate Report and in the regulation, to the factor of control. Control is probably the most important factor under maritime law,[17] just as it is under the tests of land-based employment. It may be true that, in most maritime relationships, the workers enjoy discretion that is unusually broad if measured by land-based standards—a discretion dictated by the seafaring nature of the activity. However, except where there is nearly total relinquishment of control through a bare-boat, or demise, charter, the owner may nevertheless be considered, under maritime law, to have sufficient control to be charged with the duties of an employer. See *e. g., The Norland,* 101 F. 2d 967 (C. A. 9th Cir. 1939; G. Gilmore & C. Black, The Law of Admiralty § 4–23 (1957). Congress' stress on the importance of control reflects the primacy of that factor in the rules governing the most common, land-based vocations,[18] which were certainly foremost in the congressional mind at the time of the 1948 amendment. It does not preclude the application, in different areas, of decisional rules that vary in the

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men. As noted above, the 1939 amendments extended the statutes to cover maritime employees. Additionally, 26 U. S. C. § 3121 (b)(4) provides an exemption for service by aliens on foreign vessels, and § 3306 (c)(17) exempts fishermen on vessels that do not exceed 10 tons in displacement. These provisions raise the inference that fishermen on larger vessels were expected to be covered, under the general "common law rules" provision. However, if shipowners were relieved of the employers' tax liabilities unless their relationship with the captains and crews were of the sort that would constitute an employer-employee relationship in a land-based activity, application of the statutes to fishermen might be seriously limited.

[17] See, *e. g., Cape Shore Fish Co.* v. *United States,* 330 F. 2d 961, 965–968 (Ct. Cl. 1964); G. Gilmore & C. Black, The Law of Admiralty § 4–21 (1957).

[18] See, *e. g., Radio City Music Hall Corp.* v. *United States,* 135 F. 2d 715, 717–718 (C. A. 2d Cir. 1943).

precise degree of control that is required. Cf. *Decey Products Co.* v. *Welch*, 124 F. 2d 592, 598–599 (C. A. 1st Cir. 1949); *McGuire* v. *United States*, 349 F. 2d 644 (C. A. 9th Cir. 1965).[19]

The guidelines in the regulation also allow for such flexibility, as is attested by the existence, for nearly 30 years, of the Treasury ruling, S. S. T. 387, confirming the employee status of fishermen such as those involved here. Now, as in 1948, the regulation proceeds, after the language already quoted, to elaborate some of the factors other than control that may be important:

> "The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work to the individual who performs the services." 26 CFR 31.3121 (d)–1 (c)(2).[20]

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[19] See H. R. Rep. No. 2168, *supra*, n. 12, at 9, 10:

"Ample flexibility is possible under [the common-law] rule to accommodate peculiar or unusual employment relationships so frequently found in our complex economic system.

. . . . . .

"The common-law concept of master and servant, of course, is no more fixed and immutable than the common law itself. Hence it will produce in practice varying results under varying circumstances and in different jurisdictions. But such variations will not offend the common-law rule itself . . . .

". . . There is nothing to fear from differences in the application of the common-law tests, but there is much to fear from the abandonment of recognized common-law principles in resolving such questions of fact. Such abandonment would simply amount to reliance upon no recognized body of legal principles."

[20] Other factors that may have significance are discussed in *United States* v. *Silk*, 331 U. S. 704 (1947); *Enochs* v. *Williams Packing Co.*, 370 U. S. 1 (1962); *Kirkconnell* v. *United States*, 347 F. 2d 260 (Ct. Cl. 1965); *Illinois Tri-Seal Products, Inc.* v. *United States*, 353 F. 2d 216 (Ct. Cl. 1965).

It is clear that this brief sketch of relevant factors cannot be intended to provide a workable test, complete in itself, displacing the complex of common-law rules Congress so carefully tried to preserve. Rather, the regulation provides a summary of the principles of the common law, intended as an initial guide for the determination, required by the first sentence of the regulation, whether a relationship "is the legal relationship of employer and employee." The thrust of both statute and regulation is that the standards that are to govern in any field are those which the courts customarily apply to define this "legal relationship." [21]

We conclude that the Court of Appeals erred in declining to judge the status of the captains and crewmen against the standards of maritime law. Accordingly, the judgment is reversed, and the case is remanded to that court for proceedings consistent with this opinion.

It is so ordered.

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[21] We find no support for a contrary conclusion in the fact that, shortly after the District Court's decision in this case, the Treasury Department unsuccessfully sought an amendment to § 3121 (d) (3) defining "employee" to include the captains and crews of commercial fishing vessels without regard to their status under the general definition in § 3121 (d) (2), see n. 5, *supra*. See Social Security Amendments of 1967, H. R. 12080, §§ 504 (b) (1), (2) (as amended by the Senate); S. Rep. No. 744, 90th Cong., 1st Sess., 203–205, 320–324 (1967); H. R. Rep. No. 1030, 90th Cong., 1st Sess., 74 (1967) (Conference Report deleting the amendment). That the Treasury also chose to proceed on the legislative front does not impair the argument put forth by the United States here, and Congress' failure to adopt the amendment is a dubious indication of the position of Congress in 1967 on the question before us, let alone the position of a different Congress in 1948. Cf. *United States* v. *Price*, 361 U. S. 304, 310–312 (1960); *United States* v. *Wise*, 370 U. S. 405, 411 (1962).